1938. File No. 2881/36

A CLASS P.W DEPARTMENT

E BRANCH

Subject:— Lion

Gout Servants

Orders in con. with -

P. 10.

(F.)

A[illegible]

E

File No. 2881/36

Std. Sectt. Slip 24-E

G.P.K.—J H 3 50,000—5.54
G. R. G. D No. 2108, dated 22-6-22.]

**Correspondence**

Sectt 78 A e

# DOCKET SHEET (B)

*Subject:*—

File No. ~~2881/36~~

P. W. DEPT.

E BRANCH.

*References:*—

| Date. | To whom sent. | Notes instructions, |
|---|---|---|
| | | |

Below copies of the Finance Department endorsement No.1123/33-Cg dated the 27th September 1938 and its accompaniments regarding suspension of lien of Government servants.

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No.2881/36-E.
Public Works Department,
Bombay Castle, 10th October 1938.

Copies forwarded, with compliments, to-

the superintending Engineer, Northern Circle,

the Superintending Engineer, Central Circle,

the Superintending Engineer, Deccan Irrigation Circle,

the Superintending Engineer, Southern Circle,

The Director, Central Irrigation and Hydro-dynamic Research Station, Poona,

the Electrical Engineer to Government,

The Consulting Public Health Engineer to govt, ALL ~~and~~ Executive Engineers of Divisions,

for information.

By order of the Governor of Bombay,

Sd/- R. H. Hammett, ~~S. C.~~
Deputy Secretary to the Government
of Bombay, Public Works Department.

Id/-
12/10/38

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No.1123/33-C.

Finance Department,
Bombay Castle, 22nd June 1938.

From

H. V. R. Iengar, Esquire, I.C.S.
Secretary to the Government of Bombay,
Finance Department.

To

The Secretary to the Government of India,
Finance Department.

Subject:- Lien of Government Servants:
Suspension of -.

Sir,

I am directed to address the Government of India on the following question regarding the interpretation of Fundamental Rule 14(b)

2. ------

2. An officer under the Government of Bombay who has been transferred to a post under the Government of India in an officiating capacity is due to retire on superannuation from that post within three years of the date of his transfer, and a question has arisen whether his lien on his substantive post can be suspended so as to allow provisionally substantive promotion in his place. Under Fundamental Rule 14(b), which is applicable to the case, the lien of a Government servant may be suspended, if there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than 3 years. Article 89 of the Civil Service Regulations and old Fundamental Rule 13 refer to transfer "to duty which there is reason to believe will not terminate within three Years." In revised Fundamental Rule 14(b) the reference has been changed to absence from the post on which a lien is held, but it is not clear whether in making the change, there was any intention to widen the scope of the rule. It has, however, been argued that the essential condition for suspension of an officer's lien is that there should be no likelihood, at the time he relinquishes his post, of his returning to it within three years, even though his tenure of the new post is terminated by natural causes, whether expected (e.g., superannuation) or unexpected (e.g., retirement or death), during the 3 years' period. On the other hand, it has been urged that when an officer retires from Government service he has nothing to do with any post under Government and that there is thus no point in saying that he is or is not absent from any post; accordingly, the absence referred to in Fundamental Rule 14(b) must be taken to mean absent from the permanent post only while on duty in another post or on leave to the extent mentioned in the proviso to Fundamental Rule 14(f). On this latter view, it would appear that, when it is known that a Government servant on transfer to a post outside his cadre is due to retire on superannuation within three years of his transfer, his lien on his permanent post cannot be suspended.

3. I am to request that, with reference to the provisions of

Fundamental.....

Fundamental Rule 8, you will be good enough to obtain and communicate to this Government a definite ruling in the matter from the Hon'ble Governor-General in Council.

I have the honour to be, Sir,
Your most obedient servant,

Sd/- H. V. R. Iyengar,
Secretary to the Government of Bombay,
Finance Department.

.....

No.F.12(16)-R.I/33.
Government of India.
Finance Department.
Simla, the 29th July 1933.

From

R. L. Gupta, Esquire, I.C.S.
Under Secretary to the Government of India.

To

The Secretary to the Government of Bombay,
Finance Department.

Subject:- Interpretation of Fundamental Rule 14(b)

Sir,

With reference to your letter No.1123/33-C, dated the 22nd June 1933, on the subject noted above, I am directed to say that the Governor General in Council agrees with the view expressed by the Government of Bombay that, when it is known that a Government servant on transfer to a post outside his cadre is due to retire on superannuation within three years of his transfer, his lien on his permanent post cannot be suspended.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- R. L. Gupta,
Under Secretary to the Govt. of India.

No.F.12(16)-R.I/33.

Copy, with a copy of the letter replied to, forwarded to the Accountant General, Bombay.

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No.1123/33-C. Finance Department,
Bombay Castle, 27th Sept. 1933.

Forwarded for information to all Departments of the Secretariat and the Accountant General, Bombay.

2.....

2. An amendment to the Bombay Civil Services Rules will be issued separately.

By order of the Governor of Bombay,

Sd/- B. M. Rane,
for J. SANTOS,
Deputy Secretary to the Government of Bombay,
Finance Department.

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True Copies,

V. D. Malekar,
Senior Assistant, Issue Section,
P. W. D. Secretariat.

Id/-

FINANCE DEPARTMENT.

Bombay Castle, 27th Sept. 1938.

No. 1123/33-C.- In exercise of the powers conferred by subsection (2) of ~~th~~ section 241 of the Government of India, Act, 1935, the Governor of Bombay is pleased to direct that the following amendment shall be made in the Bombay Civil Services Rules Manual:-

Page 16, Rule 19-

Insert the following Note below clause (b) of this rule:-

"Note.- When it is known that a Government servant on transfer to a post outside his cadre is due to retire on superannuation within ~~xxxx~~ three years of his transfer, his lien on his cadre post be suspended."

By order of the Governor of Bombay,

H.V.R.IENGAR,
Secretary to Government,

...rmation and guidance to-

...rnor,
...is Excellency the Governor,
* The Prothonotary and Senior Master, His Majesty's High Court Bombay,
* The Registrar of His Majesty's High Court of Judicature, Appellate Side, Bombay,
All other heads of Offices under the several Department of the Secretariat,
All Departments of the S...cretariat,

*By letter.

Paras. 47 and 48 of the Regulations for the Army in India, 1930 edition.

.....

47. Principles regarding extra-regimental employment.-

(1) An officer is ineligible for appointment as to any extra-regimental employment unless he fulfils the conditions laid down in para. 32 and, if an I.A. officer, during the first three years of his service in the India army unless, having qualified under para. 84, he elects for permanent civil employ or for service in a department of the army. No officer may be withdrawn from his unit for extra-regimental employ unless eight effective officers will be left for duty or unless he will be seconded at once.

(ii) An officer of an Indian unit, who is employed extra-regimentally will rejoin his unit two years before he so id, prepared to forego regimental promotion.

in the ordinary course succeed to command unless he is

48. Seconding of officers.- An officer will be seconded in his unit:-

(i) From the date of appointment -

(a) to the staff; as a S.C.C., 1st class; as a student at the staff college (including those belonging to the R.A.) and Royal Tank Corps, except students belonging to the British service other than R.A. and and Royal Tank Corps whose units are on the Indian establishment (including R.E.).

(b) to a department of the army;

(c) as a attendant or adjutant of a body-guard, or the Aden Troop;

(d) to the Indian auxiliary or territorial force;

(e) to the Indian Signal Corps;

(f) for extra regimental employment with an overseas expedition,

(g) to any authorised appointment at a school of instruction in India.

(ii) From date of employment, permanent or temporary in any civil or political capacity or a under the Imperial or a colonial Government, or with the Indian state forces.

(iii).....

(iii) From the date of commencement of leave when proceeding on [illegible] language leave to China and Japan.

Seconding will be permissible only when it is definitely known that the period of empolyment will last at least one year, If the period of empolyment is uncertain, the officer may be seconded after six months, whe n in the opinion of H.E. the C.-in-C. his appointment is likely to last six months longer. An officer will however, be seconded in his unit when placed for training in the Centonments Department or whena appointed permanently to the Department.

An officer seconded will retain his regimental appointment and will be eligible for advancement as if present with his corps, protem. appointments only being made in his room. On ceasing to be seconded he will resume his regimental appointment and these who held protem. appointments in his place will revert to their permanent appointments, the junior officer of all being borne as a supernumerary until absorbed or transferred to another unit. If a seconded officer is replaced by an officer from another units the letter will be seconded in his own unit.

With reference to the Dy. Secy's query re: rules laying down the conditions under which an officer is seconded, the following note is put up.

2. When an officer is deputed out of India or is transferred to foreign service or is transferred, whether in a substantive or offg. capacity, to a post in another cadre, and if or any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than 3 years, his lien can be suspended under F.R.14(b) and he is considered as seconded to his new post. Under F.R.14(d), the officer's post can be filled substantively i.e. provisionally permanent apptt. can be made if the post concerned is a post in a non selection grade of a cadre (e.g.S.E's post). These arrangements are reversed as soon as the suspended lien revives.

In accordance with the above rules provisionally permanent promotions of Messrs. Arbuthnot and Fitzherbert were made vide G.N.No.S.90-1/14396, dated the 15-8-38

Id/-
10-4-42

Nothing is stated in the Rule mentioned above "Seconded". Surely it must be laid down somewhere usually what it means and when it applies. Cannot the A.G. or the P. & S. D. throw some light on this point.

Id/-
11/4

u.o. to A.G., dated 13th April 1942.

OFFICE OF THE ACCOUNTANT GENERAL, BOMBAY.

The The term 'Seconding' is not defined any where in the Fundamental Rules. This seems to be a military term/vide para 48 of the Regulations for the Army in India 1930 Edition. The term is used in the Civil. Department to denote the any suspension of lien.

Id/-
A. A. G.

A.G.R. to Govt. in the P.W.D.
No.G.II.116 18th Apr. 42.

Submitted with reference to the D.S's note within.

Id/-
27/4/42

It is strange that a word so generally used should be not be defined.

Id/-
27-4

Liens:

Termination of -.

GOVERNMENT OF BOMBAY

Finance Department.

Circular No.1123/33

Bombay Castle, 2nd October 1945.

According to Bombay Civil Service Rule ~~20(1)~~ 20-A (b) the original lien of a Government servant who is appointed substantively to a permanent post outside the cadre on which he is borne may not be terminated except on his written request. This rule is intended to afford reasonable protection to a Government servant, the object being that a Government servant should not be required to leave his parent service against his will. In respect of regularly constituted services, the member of which are seldom transferred from service to service, the rule operates without serious difficulty. Cases have, however, been brought to the notice of Government in which the rule has been causing some difficulty, as it enables Government servants who are transferred from establishment to establishment to maintain their liens all along the line, With the result that no fully permanent appointments can be made in serveral offices. The maintenance of serval liens in this way was not contemplated by the rule and is distinctly awkward and incovenient, particularly when there are deputation reserves in the establishments from which the Government servant is transferred, which means that his vacancy on these establishments cannot be filled at all. The overcome this difficulty, Government directs that the procedure laid down in the following paragraph should be followed in cases in which a Government servant is transferred from one Department or office to another and has an active or suspended lien in the lending Department or office.

2. The borrowing Department or office, should always consult the lending Department or office before the Government servant is appointed substantively to a permanent post in the former Department or office. The lending Department or office should utilise this opportunity to decide whether it should not insist on the Government servant's applying for the termination of his lien in that Department or office, before it agrees to his being confirmed in the borrowing Department or office. In cases in which the borrowing authority is not under the administrative control of this Government, the lending authority should, at the time of the transfer of the Government servant, stipulate that he should not be confirmed .....

confirmed by the borrowing authority without the previous consent of the lending authority.

By order of the Governor of Bombay,

J.SANTOS.
Financial Adviser to Government.

G.C., No. 11/33, F.D., dated the 2nd October 1945.

To

The Accountant General, Bombay,

The Prothonotary and Senior Master, High His Majesty's High Court, Bombay,

The Registrar of His Majesty's High Court of Judicature, Appellate Side, Bombay,

The Heads of Departments under the several Departments of the Secretariat,

All Departments of the Secretariat.

No. of 1945.

Copy forwarded for information and guidance to.-

E.B.I.
15-10.

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